

To: The Honorable Mayor and City Council

From: Maxine Calloway, Esq., A.I.C.P., Director of Community Planning & Development

Date: January 24, 2012

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AUTHORIZING THE CITY MANAGER AND THE CITY ATTORNEY TO TAKE ALL ACTIONS NECESSARY TO NEGOTIATE AND EXECUTE A THIRD AMENDMENT TO THE HOMEOWNER DEVELOPMENT ASSISTANCE AGREEMENT BETWEEN THE CITY OF NORTH MIAMI AND 125 DEVELOPERS, LLC, TO EXTEND THE LOAN TERM OF THE AGREEMENT AND TO AUTHORIZE A CONDITIONAL ASSIGNMENT AND ASSUMPTION OF SAME TO NOMI LIQUIDATION, LLC, AND OTHER BENEFICIARIES , PROVIDING FOR THE CONVERSION OF THE AGREEMENT TO A MULTIFAMILY RENTAL REHABILITATION AGREEMENT UPON THE SATISFACTION OF ALL CONDITIONS; PROVIDING FOR AN EFFECTIVE DATE AND ALL OTHER PURPOSES.

STAFF RECOMMENDATION

Staff recommends that the City Council approve the proposed resolution authorizing the City Manager and City Attorney to negotiate the Conditional Assignment and the Assumption of that certain Homeowner Development Assistance Agreement between the City and 125 Developers LLC (Agreement) dated April 27, 2007 to NOMI Liquidators LLC and other Beneficiaries. Said Assignment would be conditioned on the closing of the subject properties and conveyance to NOMI Liquidators LLC and other Beneficiaries, scheduled for January, 2012.

PURPOSE & INTENT

The proposed resolution seeks to assign the Homeowner Development Assistance Agreement between the City and 125 Developers LLC to NOMI Liquidators LLC and other Beneficiaries, who will perform the obligations under the Agreement and deliver affordable rental housing to the community. In addition, the Resolution seeks to extend the term of the Agreement and to also provide termination language that will convert the Agreement from a Homeowner Development Assistance Agreement to a Multifamily Rental Rehabilitation Agreement once the condition of approval is met.

BACKGROUND INFORMATION

The City entered into a Development Assistance Agreement with 125 Developers LLC, (Borrower) on April 27th, 2007. The City provided a loan utilizing HOME Investment Partnership funds in the principal amount of Three Hundred Thousand and 00/100 dollars (\$300,000.00) (the "Loan") to be used by Borrower for the construction of the improvements of certain real property consisting of one building with a total of 35 units located at 360 NE 125th Street in North Miami. The loan was designed to be used to rehabilitate the HOME assisted units for sale to low and very low income first time homebuyers in accordance with the City's Homeownership Development Assistance and First Time Homebuyers Housing Program guidelines.

On March 24, 2009, the Council passed Resolution R-2009-34 which authorized the First Amendment to the Agreement to extend the loan to September 30, 2010. This extension provided additional time for the sale of the affordable housing units as required by the Agreement. Unfortunately, during the extension period, the economy experienced a downturn which made it impossible for Borrower to release the units as agreed.

The first mortgage holder, Everbank, filed for foreclosure action against 125 Developers LLC. Efforts are being made to resolve the issue out of court in an effort to retain the City's investment. As such, the City will agree to a Conditional Assignment and Assumption of the Agreement to a new buyer, NOMI Liquidators, who will subsequently convey and assign the units in clusters of 4 or more to three (3) Florida Registered firms as further described in the Assignment Agreement. Further, once assigned, the Development Assistance Agreement will terminate and convert into a Multifamily Rental Rehabilitation Loan Agreement governing a total of 12 of the units which will be rented to low and very low income residents in furtherance of the City's overall objective.

It is staff's opinion that this arrangement will secure the City's investment while maintaining the City's overall objective of the provision of affordable housing.

Conclusion

Staff believes the proposed resolution to authorize the City Manager and City Attorney to negotiate a Conditional Assignment of the Agreement to NOMI Liquidators LLC and Beneficiaries is in the City's best interest and provides the best solution to the City to maintain the purpose of the subject Loan. The City would maintain the investment in the Property and

NOMI Liquidators LLC along with the 3 Florida entities would be able to carry out any remaining improvements to the Property and further the City's Community Development objectives by maintaining the rental of the units at affordable rates in accordance with rent rates published by the City of North Miami.

Staff therefore recommends the approval of the Assignment subject to the following conditions.

1. That the Property is properly conveyed to NOMI Liquidators LLC and additional beneficiaries no later than February 15, 2012.
2. That NOMI Liquidators LLC, Red Roses Miami Inc., Evelyn Miami Inc. and Viola Miami Inc., execute Third Amendments to the Agreement and Multifamily Rental Rehabilitation Loan Agreements within 30 days of closing.

Attachments: 1) Resolution

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AUTHORIZING THE CITY MANAGER AND THE CITY ATTORNEY TO TAKE ALL ACTIONS NECESSARY TO NEGOTIATE AND EXECUTE A THIRD AMENDMENT TO THE HOMEOWNER DEVELOPMENT ASSISTANCE AGREEMENT BETWEEN THE CITY OF NORTH MIAMI AND 125 DEVELOPERS, LLC, TO EXTEND THE LOAN TERM OF THE AGREEMENT AND TO AUTHORIZE A CONDITIONAL ASSIGNMENT AND ASSUMPTION OF SAME TO NOMI LIQUIDATION, LLC, AND OTHER BENEFICIARIES; PROVIDING FOR THE CONVERSION OF THE AGREEMENT TO A MULTIFAMILY RENTAL REHABILITATION AGREEMENT UPON THE SATISFACTION OF ALL CONDITIONS; PROVIDING FOR AN EFFECTIVE DATE AND ALL OTHER PURPOSES.

WHEREAS, on February 27, 2007, the City Council of the City of North Miami, Florida, passed Resolution R-2007-35 which authorized the City Manager and City Attorney to enter into a Homeownership Development Assistance Agreement ("Agreement") with 125 Developers, LLC (Borrower) to finance the sale of units at 360 NE 125th Street ("Property") at affordable prices; and

WHEREAS, funds in the amount of Three Hundred Thousand Dollars and No Cents (\$300,000.00) were disbursed to 125 Developers, LLC and are secured by a mortgage recorded at Official Record Book 25788 Page Numbers 2348-2353; and

WHEREAS, the original Agreement was executed on April 27, 2007, with a loan term ending May 1, 2009; and

WHEREAS, the City Council on March 24, 2009, passed Resolution R-2009-34 which authorized a First Amendment to the Agreement to extend the loan term to September 30, 2010, to allow additional time for the sale of the affordable housing units required under the Agreement; and

WHEREAS, a Second Amendment to the agreement was subsequently passed by Resolution R-2011-39 on April 12, 2011, allowing for an extension of the loan term to December 31, 2011; and

WHEREAS, EverBank, the first mortgage holder to the property has filed a foreclosure action against Borrower and both parties have explored different options to work out the issues outside of court; and

WHEREAS, the City supports the efforts of the Borrower and EverBank and is desirous to maintain its investment in the property and as such, supports a Third Amendment to the Agreement allowing for a further extension of the term of the loan to June 15, 2012, to allow sufficient time for EverBank and the Borrower to assign the Loan to NOMI Liquidators, LLC and other Beneficiaries who will assume all the obligations and performance under the Agreement and Mortgage to ensure that the purpose of the loan agreement is fulfilled; and

WHEREAS, the City consents to the conditional assignment ("Assignment") of the Homeownership Development Assistance Agreement and the underlying mortgage to NOMI Liquidators, LLC and other Beneficiaries; and

WHEREAS, the Assignment is conditioned on the closing of the subject properties, conveyance to NOMI Liquidators, LLC, and their subsequent assignment to the other Florida Corporation Beneficiaries as further defined in the Assignment and demonstrating proof of conveyance to the City; and

WHEREAS, the Mayor and City Council authorize the City Manager and City Attorney to take all action necessary to negotiate and execute the required Assignment and Third Amendment to the Homeowner Development Assistance Loan Agreement to extend the term to June 15, 2012, and to further convert the Agreement to a Multifamily Rental Rehabilitation Agreement upon closing and conveyance without further Council action.

NOW THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA:

Section 1. Authority to City Manager and City Attorney. The Mayor and City Council of the City of North Miami, Florida, hereby authorize the City Manager and the City attorney to take all action necessary to negotiate and execute a Third Amendment to the Homeowner Development Assistance Agreement between the City of North Miami and 125

developers, LLC, to extend the loan term of the Agreement and to authorize a Conditional Assignment and Assumption of same to Nomi Liquidation, LLC, and other Beneficiaries; providing for the conversion of the Agreement to a Multifamily Rental Rehabilitation Agreement upon the satisfaction of all conditions.

Section 2. **Effective Date.** This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED by a _____ vote of the Mayor and City Council of the City of North Miami, Florida, this _____ day of January, 2012.

ANDRE D. PIERRE, ESQ.
MAYOR

ATTEST:

MICHAEL A. ETIENNE, ESQ.
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

ROLAND C. GALDOS
INTERIM CITY ATTORNEY

SPONSORED BY: CITY ADMINISTRATION

Moved by: _____

Seconded by: _____

Vote:

Mayor Andre D. Pierre, Esq.	_____ (Yes)	_____ (No)
Vice Mayor Jean R. Marcellus	_____ (Yes)	_____ (No)
Councilman Michael R. Blynn, Esq.	_____ (Yes)	_____ (No)
Councilman Scott Galvin	_____ (Yes)	_____ (No)
Councilwoman Marie Erlande Steril	_____ (Yes)	_____ (No)